

Appln. No.: 10/730,210
Amendment Dated June 11, 2007
Reply to Office Action of March 9, 2007

BBM-141US2

Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 2A, 2B, 21B and 21C. These sheets replace the original sheets.

Attachment

Remarks/Arguments:

Objection to the Drawings

The drawings are objected to as not including reference signs "26" and "74" which are mentioned in the description. Replacement drawing sheets including changes to Figures 2A, 2B, 21B and 21C. Figures 2A and 2B are amended to include reference sign 26, Figure 21B is amended to include reference sign 74 and Figure 21C is amended to include reference sign 16. No new matter is added. Withdrawal of this objection is respectfully requested.

Claim Rejections Under 35 U.S.C. § 112

Claims 7, 10-12, 15, 16 and 21 stand rejected under 35 U.S.C. §112, second paragraph, for various reasons. Applicants respectfully submit that the claims as amended particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Double Patenting Rejections

Claims 1-8, 10-12, 15-17, 21 and 61-63 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,695,846. While applicants traverse that the pending claims are obvious variants of claims 1-6 of U.S. Patent No. 6,695,846, a terminal disclaimer with respect to U.S. Patent No. 6,695,846 is submitted herewith as an administrative expedient.

Applicants note the provisional double patenting rejection based on applicants' U.S. Patent Application No. 10/401,997. Applicants respectfully submit that such double patenting rejection will be addressed upon allowance and issuance of one or more of the applications.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-8, 10, 15-17, 21 and 61-63 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,607,426 (Ralph et al.). Claims 1 and 7 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,017,345 (Richelsoph). Claims 1 and 10-12 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,138,550 (Michelson). Applicants respectfully traverse these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claim 1 recites a bone plate assembly comprising: "a base plate including at least one aperture defining a through opening extending through the base plate; and a screw retaining mechanism mounted and rotatable within said aperture between locked and unlocked positions relative to said through opening for preventing the bone screw from backing out from said base plate, wherein said screw retaining mechanism includes a center axis and an opening eccentric to said center axis and wherein said screw retaining mechanism is rotatable within said aperture about said center axis between said locked and unlocked positions, wherein said opening of said screw retaining mechanism is eccentric with said through opening of said base plate when in said locked position and said opening of said screw retaining mechanism is concentric with said through opening of said base plate when in said unlocked position."

Ralph et al. and Richelsoph do not teach a screw retaining mechanism having an opening that is eccentric to a center axis thereof and are not cited in the Office Action for such. Michelson is the only reference cited for teaching an eccentric opening, however, Michelson does not teach each limitation each and every limitation of the claimed invention. The examiner refers to Figure 33 of Michelson, which shows the plate 2 of Figs. 1-5 in operation. (see col. 20, Ins. 5-13). As explained at column 13, lines 22-30, "plate 2 is provided with three locking screw holes 12, each of which in the preferred embodiment is internally threaded 3, and each of which is surrounded by a shallow countersunk region 14. As will be described in greater detail below, in the preferred embodiment, bone screws are inserted in the bone screw receiving holes {6} and a single locking element associated with each of the locking screw holes 12 locks a number of bone screws 30 in position at one time." The locking screws of Michelson are not mounted and rotatable within the apertures which define through openings as recited in independent claim 1. Instead, the locking screws are mounted in distinct locking screw holes 12.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 1

is in condition for allowance. Claims 2-8, 10, 15-17 and 21 each depend from claim 1 and are therefore allowable for at least the reasons set forth above.

Claims 13 and 14 are withdrawn from consideration, however, each of these claims depends from generic claim 1. Applicants respectfully request reconsideration and allowance of claims 13 and 14 upon allowance of generic claim 1.

Independent claim 62 recites a bone plate assembly comprising "a base plate including at least one hole extending therethrough; insert means operatively engaged within said at least one hole for accommodating the bone screw and a screw retaining mechanism mounted and rotatable within said insert means between locked and unlocked positions relative to said insert means for preventing the bone screw from backing out from said base plate."

Ralph et al. is cited as teaching an insert means 142 with a screw retaining means 132 that is movable and rotatable within the insert means 142. Even if the cap portion 142 was reasonably interpreted as an insert means and the socket portion 132 as a screw retaining means 132, the socket portion 132 is not rotatable relative to the cap portion 142 between locked and unlocked positions. Once the cap portion 142 is inserted, rotation of the socket portion 132 will not change the locked condition of the screw.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 1 is in condition for allowance.

It is respectfully submitted that each of the pending claims is in condition for allowance. Early reconsideration and allowance of each of the pending claims are respectfully requested.

If the Examiner believes an interview, either personal or telephonic, will advance the prosecution of this matter, the Examiner is invited to contact the undersigned to arrange the same.

Respectfully submitted,



Jonathan H. Spadt, Reg. No. 45,122
Glenn M. Massina, Reg. No. 40,081
Attorneys for Applicants

JHS/GMM/ap

Attachments: Figures 1A-3B and 18-21C (2 sheets)
Abstract
Terminal Disclaimer

Dated: June 11, 2007

<input checked="" type="checkbox"/> P.O. Box 980 Valley Forge, PA 19482 (610) 407-0700
<input type="checkbox"/> P.O. Box 1596 Wilmington, DE 19899 (302) 778-2500

The Director is hereby authorized to charge or credit Deposit Account No. 18-0350 for any additional fees, or any underpayment or credit for overpayment in connection herewith.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

